



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]
EAC 98 075 53698

Office: Vermont Service Center

Date: OCT 3 2000

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Public Copy

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. A brief was submitted by counsel subsequent to the appeal but was not included in the record of proceedings prior to the decision of the Associate Commissioner. In light of that, the case will be reopened. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of the Philippines who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner failed to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during the marriage.

Upon review of the record of proceeding, the Associate Commissioner determined that the petitioner failed to submit additional evidence to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(E). The Associate Commissioner, therefore, concurred with the director's conclusion and denied the petition on June 21, 1999. Counsel, however, submitted a brief subsequent to the appeal and was received by the Service on June 24, 1998, but was not included in the record of proceedings prior to the decision of the Associate Commissioner.

In his brief, counsel asserts that the Service never challenged that the petitioner was abused by her United States citizen husband during their marriage, but instead, the Service only determined that the abuse the petitioner's husband perpetrated upon her did not conform to the definition of "extreme cruelty" as contemplated by Congress. Counsel submits additional evidence.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including

rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed in his decision the evidence furnished by the petitioner to establish that she has been the subject of extreme cruelty. That discussion will not be repeated here. He noted, however, that while the Service respects the opinions of professionals, the record did not contain sufficient evidence to support those opinions and demonstrate that the petitioner had suffered battery and/or extreme cruelty such as that which is described in the Violence Against Women Act.

The Associate Commissioner also reviewed the evidence in the record and determined that the petitioner failed to submit additional evidence to overcome the director's findings.

Counsel submits with his brief evidence previously furnished and addressed by the director. He also submits a Release of Information Authorization from Family Service Agency and supplemental letters from [REDACTED] and [REDACTED]

1. Counsel states that the Release of Information Authorization from Family Service Agency indicates that the petitioner is attending a support group for women who have experienced domestic abuse. This document, however, is an authorization signed by the petitioner, authorizing the Family Service Agency to release records to her attorney regarding "attending group for women who have experienced domestic abuse." Such document is not evidence of a qualifying abuse.

2. [REDACTED] the petitioner's co-worker, states in her letter of July 16, 1998, that she has witnessed the abuse of the petitioner "for some occasional times," and that "there are times she knock at my door in the middle of the night crying. It happened several times and her husband would picked her up in the morning and asking for forgiveness-like nothing had happened." Ms. [REDACTED] further states that the last time she remembered was when the petitioner picked up her daughter and her spouse verbally abused her by calling her names like "whore," "bitch," "mother fucker" in front of her and that she was really shocked.

This letter from [REDACTED] however, contradicts her own letter dated December 1, 1997 in which she states that the petitioner had confided in her regarding complications she experienced in her relationship to her husband's parents. As noted by the director in his decision, [REDACTED] statement did not indicate any knowledge of the battery or extreme cruelty the petitioner claimed to have suffered from her husband, and that she made no reference to having witnessed any emotional behavior on her part at work. This letter further contradicts the petitioner's declaration dated January 12, 1998 in which she claims that "my co-workers noticed my eyes were always swollen. But I did not ask for help, except that I told only those close to me what had happened."

3. [REDACTED] the petitioner's co-worker, states in her letter of June 16, 1998, that she knows the petitioner was having problem with her marriage, and that she cried a lot when she talks about her husband mentally abusing her. [REDACTED] further states that in July 1997 the petitioner's husband told the petitioner to leave the house and that the petitioner stayed at her house for one month. She indicates that "during her stay, she gets phone calls from her husband and after the phone calls, she was scared and started crying. He even accused us of being lesbians."

This letter from [REDACTED] however, is inconsistent with her own letter dated December 1, 1997, in which she states that she has frequently visited the petitioner until her husband decided to move back to his family, taking with him the petitioner and his daughter. [REDACTED] makes no reference to the petitioner's claimed abuse, nor did she make any reference to having witnessed

any emotional behavior during her visit with the petitioner or at work. While [REDACTED] indicates that after receiving phone calls from her husband the petitioner "was scared and started crying," there is no evidence of threatened act of violence, nor is being accused of lesbianism evidence of extreme cruelty. This letter further contradicts the petitioner's declaration dated January 12, 1998 in which she claims that "my co-workers noticed my eyes were always swollen. But I did not ask for help, except that I told only those close to me what had happened."

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i).

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The petitioner has failed to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse, and to overcome the findings of the director and the Associate Commissioner pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

Accordingly, the decision of the Associate Commissioner dated June 21, 1999 will be affirmed.

ORDER: The decision of the Associate Commissioner is affirmed.